IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1072 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO LTD.

Versus

ARVINDBHARTHI DHIRUBHARTHI GOSAI

Appearance:

MR SHALIN N MEHTA for Appellant
MR YATIN SONI for Respondent No. 1
RULE SERVED for Respondent No. 2
MR PREMAL R JOSHI for Respondent No. 3

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 06/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Mr. Soni appears on behalf of Respondent no.1 and Mr. Premal Joshi on behalf of Respondent no.3. Respondent no.2 is absent though served.

2. Heard the learned counsel for the respective parties. On a joint request of the learned counsel for the parties, this appeal is taken up for final hearing today.

3. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, at the instance of the insurer of the vehicle which is allegedly involved in the accident in question.

4. The appellant challenges herein the order below Exh.7 passed by the Tribunal under Section 140 of the said Act in Motor Accident Claim Petition No.2476 of 1999. Obviously, this award is in the nature of an interim award which is subject to adjustment against the final award which may be passed in the Main Claim Petition viz. Motor Accident Claim Petition No. 2476 of 1999, pending before the Motor Accident Claims Tribunal, Rajkot. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala reported in 2001 (4) JT 477.

5. The original claimant shall, however, file an undertaking before the Tribunal within four weeks of the service of the order on the claimant to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

6. On the said undertaking being filed, the amount of the impugned award may be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal.

7. Subject to the observations and directions hereinabove, the above appeal is dismissed with no order as to costs.

8. The amount deposited in the appeal, if any, with the Registry is directed to be transmitted to the

Tribunal forthwith, i.e. not later than 13th August, 2001.

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